

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dr. EARL S. LEE,

Plaintiff,

v.

JOYCE CARR, CINDY AMUNDSON
(O'HALLORAN), DENNIS DOESHER,
YAKIMA HEALTH DISTRICT, and BRAD
MELLOTTE,

Defendants.

No. CV-04-3090-FVS

ORDER GRANTING SUMMARY
JUDGMENT AND ENTERING
JUDGMENT

THIS MATTER came before the Court pursuant to the defendants' motions to dismiss and motions for summary judgment. The Court heard oral argument in this matter on April 7, 2005. The defendants were present and represented by counsel. James Adams appeared on behalf of the defendants Joyce Carr and Cindy O'Halloran; Sara Watkins appeared on behalf of the defendants Yakima County Health District and Dennis Doescher; Gary Lofland appeared on behalf of Defendant Brad Mellotte. The plaintiff is proceeding *pro se* but he did not appear at the hearing or respond to the defendants' motions.

Procedural History

On August 4, 2004, Plaintiff filed this action alleging he was retaliated against by the defendants in violation of the Fair Housing Act, 42 U.S.C. § 3617, and Washington's state Law Against Discrimination, RCW 49.60 et seq. On September 8, 2004, Plaintiff moved for default under LR 55(b)(1) on grounds that the defendants

1 failed to file their Answers to Plaintiff's Complaint in the time
2 required. The Court denied this motion after finding that the
3 defendants each filed timely Answers, Ct. Rec. 22. On November 22,
4 2004, Plaintiff failed to appear for a court-ordered scheduling
5 conference. On November 29, 2004, Plaintiff failed to appear for his
6 deposition. Thereafter, each defendant filed a motion to dismiss, or
7 in the alternative, motion for summary judgment. Plaintiff did not
8 respond to any of those motions.

9 **Summary Judgment Standard**

10 Summary judgment is appropriate if the "pleadings, depositions,
11 answers to interrogatories, and admissions on file, together with the
12 affidavits, if any, show that there is no genuine issue as to any
13 material fact and that the moving party is entitled to judgment as a
14 matter of law." Fed.R.Civ.P. 56(c). When considering a motion for
15 summary judgment, the Court may neither weigh the evidence nor assess
16 credibility; instead, "the evidence of the non-movant is to be
17 believed, and all justifiable inferences are to be drawn in his
18 favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106
19 S.Ct. 2505 (1986).

20 **Relevant Facts**

21 Here, because Plaintiff did not respond to the defendants'
22 motions for summary judgment, the only facts considered by the Court
23 are those submitted in the defendants' Joint Statement of Material
24 Facts, Ct. Rec. 28. Those facts are adopted and incorporated herein
25 by reference.
26

1 **Discussion**

2 The Court carefully and independently reviewed the defendants'
3 motions since Plaintiff failed to respond.

4 *Yakima County Health District*

5 Defendant Yakima County Health District ("Health District")
6 moves to dismiss the Complaint for insufficiency of service of
7 process and lack of jurisdiction pursuant to Federal Rule of Civil
8 Procedure 12(b)(2) and (5). Defendant Health District is a
9 governmental organization that has powers and duties granted by the
10 county board of health. RCW 70.46.060. According to Federal Rule of
11 Civil Procedure 4(j)(2), service upon a governmental organization is
12 effected by serving its chief executive officer or by serving the
13 summons and complaint in accordance with state law. Here, Plaintiff
14 attempted to serve the Health District by serving Defendant Dennis
15 Doesher. As an employee of the Health District, Mr. Doescher does
16 not have authority to accept service on behalf of the Health
17 District. The Health District was not properly served because
18 Plaintiff did not serve a chief executive officer or an agent
19 authorized to accept service on behalf of the Health District.
20 Accordingly, the Court grants Defendant Health District's motion to
21 dismiss for insufficient service of process.

22 With respect to the remaining defendants' motions, the Court
23 concludes that summary judgment is appropriate.

24 *Joyce Carr*

25 The Court determines that Defendant Carr is exempt from
26 liability under 42 U.S.C. § 3604 because she meets the requirements

1 of the exemption found at section 3603. Moreover, even if Defendant
2 Carr did not meet the exemption, there is no evidence that her
3 actions were motivated by Plaintiff's race. Rather, the record
4 demonstrates that (1) Plaintiff had no legal right to participate in
5 the option to purchase; (2) Plaintiff did not accept and insisted on
6 modifying the terms on all offers made by Defendant Carr; (3) after
7 deciding she could not trust Plaintiff, Defendant Carr stopped
8 negotiating with Plaintiff; and (4) Defendant Carr attempted to evict
9 Plaintiff only because he was not properly caring for Defendant
10 Carr's rental property.

11 *Brad Mellotte*

12 With respect to Defendant Mellotte, the record reflects that his
13 actions and conduct were consistent with his role as Defendant Carr's
14 legal counsel. No evidence exists to show Defendant Mellotte's
15 actions were based on an independent, discriminatory intent or
16 purpose. To the contrary, Mr. Mellotte did not know Mr. Lee's race
17 during the exchange of correspondence.

18 *Cindy O'Halloran and Dennis Doescher*

19 With respect to Defendant O'Halloran, the record reflects only
20 that she reported Plaintiff to the Health District because the yard
21 of the rental house occupied by Plaintiff contained excessive dog
22 feces. With respect to Defendant Doescher, the record reflects that
23 he performed his job duties as an employee of the Health District.
24 Defendant Doescher and the Health District simply responded to a
25 citizen's complaint, investigated the complaint, issued two notices
26 to the property owner, and issued a follow-up letter when the

1 condition was fixed. There is no evidence that either of these
2 defendants' actions were motivated by Plaintiff's race.

3 The Court concludes that there is no evidence that Plaintiff was
4 denied any right under the Fair Housing Act, 42 U.S.C § 3604, or that
5 any actions of the defendants, alone or in concert, could be
6 considered unlawful coercion, intimidation, or interference under 42
7 U.S.C. § 3617. Accordingly, with respect to Plaintiff's claims
8 asserted under the Fair Housing Act, the Court grants summary
9 judgment in favor of all defendants.

10 **Supplemental Jurisdiction**

11 The Court exercises supplemental jurisdiction pursuant to 28
12 U.S.C. § 1367 over Plaintiff's claims brought under RCW 49.60. The
13 Court concludes that no evidence exists in the record to find that
14 Plaintiff's race played any part in the decisions, acts, or conduct
15 of any of the defendants. Accordingly, the defendants' motions for
16 summary judgment are granted with respect to Plaintiff's claims
17 brought under Washington state law.

18 **Sanctions**

19 The defendants each request an award of attorney fees and costs
20 pursuant to Local Rule 1.1. The Court determines that sanctions are
21 appropriate. This is a case where the plaintiff filed a lawsuit,
22 served some, but not all of the parties, and then declined to
23 participate any further. Plaintiff's last participation in the case
24 was September 8, 2004. Thereafter, Mr. Lee failed to provide the
25 required disclosures under Federal Rule of Civil Procedure 26(a),
26 failed to participate in the Court-ordered scheduling conference,

1 failed to appear for his scheduled deposition, and failed to respond
2 to the defendants' motions. Plaintiff placed an unnecessary burden
3 and cost on the defendants by allowing this lawsuit to continue
4 without participating. The Court determines that the fees requested
5 by the parties are reasonable. Accordingly, the Court awards fees
6 and costs against Plaintiff in favor of the defendants as follows:

7 Yakima County Health District and Dennis Doescher: \$5,853.57
8 Joyce Carr: \$8,802.50
9 Cindy O'Halloran: \$3,087.00
10 Brad Mellotte: \$6,186.25

11 **IT IS HEREBY ORDERED:**

12 1. Defendant Mellotte's Motion for Summary Judgment, **Ct. Rec.**
13 **23**, is **GRANTED**, and his Motion to Dismiss, **Ct. Rec. 23**, is **MOOT**.

14 2. Defendant Carr's Motion to Dismiss and Motion for Summary
15 Judgment, **Ct. Rec. 29**, is **GRANTED**.

16 3. Defendant O'Halloran's Motion for Summary Judgment, **Ct. Rec.**
17 **33**, is **GRANTED**.

18 4. Defendant Doescher's Motion for Summary Judgment, **Ct. Rec.**
19 **37**, is **GRANTED**.

20 5. Defendant Yakima Health District's Motion to Dismiss, **Ct.**
21 **Rec. 37**, is **GRANTED**.

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to **ENTER JUDGMENT** in favor of all of the defendants, and
24 enter this order and furnish copies to counsel and **Plaintiff**.

25 **DATED** this 25th day of April, 2005.

26 s/ Fred Van Sickle
Fred Van Sickle
Chief United States District Judge